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Supreme Court, U.S.
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NO._____

IN THE
SUPREME COURT OF THE UNITED STATES.

BABASHOLA (SHOLA) ABE / PETITIONER, PRO SE
v
MICHIGAN STATE UNIVERSITY / RESPONDENT.

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_____/

ON PETITION FOR A WRIT OF CERTIORARI TO THE STATE OF MICHIGAN COURT OF APPEALS.

PETITION FOR A WRIT OF CERTIORARI

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65 pp

THE QUESTION(S) PRESENTED FOR REVIEW:

DID THE STATE COURT OF MICHIGAN INFRINGE UPON, AND VIOLATE THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT TO THE U.S. CONSTITUTION RIGHT OF PETITIONER WHEN IT DENIED PETITIONER HIS STATUTORY APPEALS OF RIGHT WHILE IT GRANTED AND GRANTS SUCH RIGHTS TO OTHER LITIGANTS IN THE STATE.

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12.	28 U.S.C., sec. 1257 (a)	1.

OPINION BELOW.

The State's Appellate Court and Supreme Court orders are hereby appended. The orders of the courts were not accompanied by any opinion, neither did they refer to any issues of law, facts, evidence, or otherwise in controversy in the record, and does not refer to any legal authorities upon which the ruling(s) was / were based. Unpublished.
State Circuit Court Opinions and Orders are also appended. Unpublished, in state court record.

JURISDICTION.

The day on which the State of Michigan Court of Appeals decided my case was **July 29, 2002.**
A timely motion for rehearing was denied on **September 9, 2002.**
A timely Application for leave to appeal to the Michigan Supreme Court was denied on **February 28, 2003.**
A timely motion to reconsider by the Michigan Supreme Court was denied on **May 30, 2003.**

The jurisdiction of the court is invoked under **28 U.S.C., sec. 1257 (a).**

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.

1. The Fourteenth Amendment to the U.S. Constitution, Article 14, section 1, which states as follows:

"All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the states wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; **nor deny to any person within its jurisdiction the equal protection of the laws."**

2. MCR 7.204; MCR 7.203 (A)(1); MCLA 600.308 (1)(a) MSA 27A.308[1][a].

"THE COURT OF APPEALS HAS JURISDICTION ON APPEALS FROM THE FOLLOWING ORDERS AND JUDGMENTS **WHICH SHALL BE APPEALLABLE AS A MATTER OF RIGHT:** (a) All final judgments from the circuit court..."

STATEMENT OF THE CASE.

The issues presented below are all in the state's court record. Other legal issues in controversy in this case not presented in this petition are of court record.

Petitioner filed a civil suit against Respondent in the State Circuit Court on January 11, 1996, with a complaint that respondent discriminatorily violated petitioner's civil rights under the The State of Michigan Civil Rights Statute, The *Elliot Larsen Civil Rights Acts of 1976, as amended by Act 11, Public Acts of 1991, Article 4, section 401; section 402 (1)(a)(b);* The State of Michigan Gross Negligence Statute - Wilful and Intentional conduct, *MCLA 691.1401-1407*; *The Federal Civil Rights Statute, The Title VI of the Federal Civil Rights Act of 1964, and its implementing regulations, 45 CFR, part 80, (section 6602 of Title VI, 78 stat. 252; 42 U.S.C. 2000d.1).* Petitioner **demanded a jury trial with his complaint and** with subsequent amendments to that complaint. U. S. Const. Amend. 7." "Plaintiff demands trial by jury of all jury triable issues." See complaint and Circuit court docketing statement. The circuit court, in an abuse of discretion, incorrectly granted defendant's motion for summary disposition, and arbitrarily **denied** petitioner's motion for summary judgment and **jury trial** as demanded and entitled to.

Subsequently, the denial of **jury trial** by the circuit court was raised before the state's court of appeals during petitioner's application for leave to appeal the October 25, interlocutory order of the circuit court as demanded in petitioner's brief before the Michigan Court of Appeals filed on 11/13/2000, page 45, item

4, page 46, "Plaintiff-Appellant demands trial by jury of all jury triable issues." Leave to appeal that interlocutory order and jury demand was **DENIED** on May 3, 2001, **with no resolution of any issue of law, fact, evidence, or otherwise brought before the court by petitioner, including the constitutional right to jury trial issue.** Court of Appeals Docket No. 230819 as referenced by the court on its July 29, 2002 order, orders appended. Timely motion for rehearing and **jury demand** were **DENIED** on June 18, 2001. Petitioner's application for leave to appeal to the Michigan Supreme Court on July 3, 2001 was **DENIED** on November 30, 2001. Timely Motion to reconsider filed on December 18, 2001 was **DENIED** on May 30, 2002. **concluding** the proceedings concerning the circuit court's interlocutory order of October 25, 2000. The above is a background to the petitioner's case now before the Honorable Court.

The case that is now before the Honorable Court, timely began on June 14, 2002. That was 15 days to the **conclusion** of the interlocutory order proceedings described above. When within court rules, and established rules of law as cited below, petitioner timely filed his delayed application for leave to APPEAL AS OF STATUTORY RIGHT as previously claimed on his **May 18, 2001** motion before The Court of Appeals, **COA # 230819** referenced in the court's July 29, 2002 order. "Appellant's Motion for Rehearing his appeal of 11/13/2000, Per MCR 7.211 - **"Appellant hereby respectfully move the Honorable Court to rehear his appeal of Final Judgment / Order entered in this case on October 11, 2000. See The Basis of the jurisdiction of the Court of Appeals attached."** See Below.

STATE OF MICHIGAN
IN THE COURT OF APPEALS

COA # 230819
Case No. 96-82140-NZ
Hon. Peter D. Houk.

BABASHOLA ABE
Plaintiff-appellant- Pro se
v
Michigan State University
Defendant-Appellee.
_____/

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APPELLANT'S MOTION FOR REHEARING HIS APPEAL OF 11/13/2000, PER MCR 7.211.

Appellant hereby respectfully move the Honorable Court to rehear his appeal of Final Judgment / Order entered in this case on October 11, 2000. See "THE BASIS OF THE JURISDICTION OF THE COURT OF APPEALS" attached. *(See next page).*
NOTE COURT ***STAMP*** *DATE.* (I.)

THE BASIS OF THE JURISDICTION OF THE COURT OF APPEALS

Jurisdiction over this appeal is conferred on the Court of Appeals **by the Appeal of Right from a final order of the Circuit Court** [Rule 7.203 (A)(1)], MCLA 600.308 (1)(a) MSA 27A.308[1][a].

1. A motion for reconsideration was timely filed on October 17, 2000. That motion was denied by Hon. Peter Houk on October 25, 2000. A claim of appeal was timely filed on November 13, 2000.

2. Entry of order from which plaintiff has claimed an appeal was entered on **October 11, 2000.**

3. Filing date of motion, October 17, 2000.

4. Plaintiff-appellant claim of appeal was filed on **November 13, 2000.**

On page 3 - 4 of that motion, item B, second sentence, appellant claimed, "By the nature of Appellant's complaint and demand for relief, he had and has a **constitutional right to jury trial** under the State Constitution preserving his right to jury trial. ... When the lower court canceled the jury trial scheduled in this case, it wrongly denied appellant his constitutional right to jury trial. See The State of Michigan Constitution, Article 1, sec. 14." **This was 7 months, less than and within** 12 months after the circuit court's final judgment and order, making him **timely** in filling. **The court of Appeals had and has jurisdiction over Petitioner's Appeals of right, contrary to the court's holding in its order of July 29, 2002.** Although, the 12 month **time** to file the application for leave to appeal as of right as done in this case by petitioner, **only began to run after May 30, 2002,** after the conclusion of the

proceedings regarding the interlocutory order in the same case, according to the **established rule of law** by the Michigan Court of Appeals as in People v Kincaid, and Waattii v Dehko among others as cited below, Petitioner's **May 18, 2001** motion, cited above, appealing the October 11, 2000 decision of the lower court, and argued the violation of his constitutional right to jury trial as demanded, in **7 months**, less than, **and within** 12 months of the court's order.

The **constitutional issues** within the scope of petitioner's statutory appeals of right in this case raised by petitioner before the Michigan Court of Appeals on June 14, 2002 includes the following: The circuit court's arbitrary denial of petitioner's constitutional right to jury trial as demanded on January 11, 1996, and the violation of Petitioner's equal protection of the laws rights for denying jury trial. See Petitioner's application for leave to file a delayed appeal of right at the Michigan Court of Appeals, filed on June 14, 2002, COA # 241968, page 4, items # 2, 3, 4, & 5; Brief in support of application, page 36, item # 2, "Wrongful Denial of Constitutional Right to Jury Trial - As stated in appellant's complaint in this case, appellant brought a discrimination action against appellee seeking declaratory relief and money damages with demand for a jury trial. Appellant has a constitutional right to jury trial under the Federal and State constitution preserving his right to jury trial. See The Seventh Amendment to the U. S. Constitution, and the State of Michigan Constitution, Article 1, sec. 14...." page 51, "Jury Demand."- Plaintiff-Appellant demands trial by jury of all jury triable issues." Leave to appeal **as of right** as **statutorily** entitled to was **DENIED** by the court

on July 29, 2002, summarily dismissing petitioner's appeal of right, without any legitimate justifiable non discriminatory reason, **with finality effect** on my statutory and constitutional rights involved in my case, without ever resolving the legal questions in controversy in my case. Timely motion to reconsider on August 8, 2002, with argument to the court for violating my constitutional right to jury trial and the equal protection of the laws was **DENIED** September 9, 2002. See briéf submitted to the Michigan Court of Appeals, page 8, item 1, "Appellant's constitutional right to jury trial as demanded with appellant's complaint was denied by the court. See The State of Michigan Constitution, Article 1, section 14. 'The right to jury trial shall remain when demanded by one of the parties."

Timely leave to appeal to the Michigan Supreme Court was filed on September 26, 2002, again raising the issue of the denial of jury trial as demanded and constitutionally entitled to. See Petitioner's Application for leave to appeal and supporting brief, page 5, item # 2 (a), page 8, Item # (iii), page 18, item # 2 (a), page 23, item # 1, Petitioner's Affidavit, page 41, item # 3, first sentence, line 4. Leave was **DENIED** on February 28, 2003.

In his timely Motion to reconsider to the Michigan Supreme Court on March 18, 2003, Petitioner again raised the issue of the state's lower courts violation of his constitutional right to jury trial and the equal protection of the laws. See page 2 of Motion. Appellant's Motion for Reconsideration- "...Because the decisions of lower courts intentionally discriminatorily violated and violates Appellant's

constitutional rights to equal protection of the laws..." Supporting brief, page 7, item # 2, last sentence. "**Both lower courts** violated appellant's constitutional right to equal protection of the laws"; Item # 3, "Appellant had and has a substantive fundamental right to appeals of right of the Final Judgment and Order of the lower court, MCR 7.204; MCR 7.203 (A)(1); MCLA 600.308 (1)(a)."; item 4, "Appellant had and has a substantive fundamental right to equal protection of the laws. See The Michigan Constitution, Article 1, sec.2; The U. S. Constitution, Article 14, sec. 1. The Courts below erroneously denied appellant his statutory and constitutional rights listed above.". Page 10 - 11, item # 4, verbatim quotation of the constitutional provisions as listed on page 7 and cited above; page 16, item B, "The Circuit Court intentionally, discriminatorily infringed upon and violated Appellant's constitutional guaranteed equal protection of the laws with its intentionally erroneous final judgment and order of October 11, 2000. The Court of Appeals wilful discriminatory failure to resolve the legal issues in controversy in appellant's statutory appeal of right"; page 17, item # 1,"...Appellant is entitled to equal treatment under the law, like the litigants in cited case law precedents in this case. ...The court of Appeals has discriminatorily failed to grant appellant his appeals of right to review the circuit court's final judgment and order that violates appellant's constitutional guarantee of equal protection of the laws, in order to intentionally deny appellant successful judgment and recovery in this case."; page 20, item XIII, "Appellant had and has a constitutional right to jury trial. See The State of Michigan Constitution, Article 1, sec. 14. "The right to jury trial shall remain when demanded by one of the

parties. Appellant demanded jury trial. See lower court's docketing statement. Appellant's constitutional right to jury trial was erroneously, discriminatorily, in an abuse of discretion. denied to appellant by the circuit court. The Court of Appeals has intentionally and discriminatorily failed to address this constitutional issue in appellant's appeal of right."; page 24 -25, " Conclusion";Both lower courts intentionally, with discriminatory motive, failed to provide equal justice under the laws to appellant, or failed to treat appellant equally under the laws, in a wilful and intentional violation of his constitutional rights, in order to unjustifiably deny him his due successful legal judgment in this case..."; "Relief Requested." Appellant respectfully request...to remand this case back to the court of Appeals and direct or order the court of appeals to reinstate appellant's appeal of right as he is entitled to, and to provide appellant with equal justice under the law as mandated by the constitution,..." Motion **DENIED** on May 30, 2003.

Respectfully, petitioner now seeks a Writ of Certiorari to the Michigan Court of Appeals to get his **statutory appeals of right** and his constitutional right to the equal protection of the laws restored.

REASON FOR GRANTING THE WRIT.

The State provides statutory appellate review to litigants in the state. MCR 7.204; MCR 7.203 (A)(1);MCLA 600.308 (1)(a) MSA 27A.308 [1][a]. "The court of appeals has jurisdiction on appeals from the following orders and judgments **which shall be**

appealable as a matter of right; (a) All final judgments from the circuit court..." See pg. 4-6.

The State Court intentionally, arbitrarily, in an invidious discrimination, violated petitioner's Fourteenth Amendment to the U.S. Constitution right of equal protection of the laws when it:

1. Intentionally, arbitrarily, with discriminatory motive, denied petitioner his substantive statutory right to an appeals of right of the **final** judgment and order of the circuit court as provided for by statute, **while it granted and grants such rights to other litigants in the state.** In *Lindsey v Normet. 92 S. Ct. 862,(at 27), 405 U.S. 56, 31 L. Ed. 36,* the Honorable court ruled as follows:

> **"Where a state provides appellate review, it cannot be granted to some litigants and capriciously or arbitrarily denied to others without violating the Equal Protection clause."** U.S. Const. Amend. 14.

2. And within the scope of the above denial and deprivation, intentionally arbitrarily denied petitioner his substantive fundamental right to jury trial, a matter of legislative intent under the State's Civil Rights Act, and as constitutionally preserved by The Seventh Amendment to the U.S. Constitution, "In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved...", and the State of Michigan Constitution, Article 1, section 14, "The right to jury trial shall remain when demanded by one of the parties". Petitioner demanded a jury trial. Petitioner is by law entitled to an impartial jury determination of his claims and to the constitutional equal protection of the laws. **The Michigan Court's decision in this**

case conflicts with relevant decisions of the United States Supreme Court.

Petitioner respectfully asks the Honorable Court to uphold the constitution in this case, and restore Petitioner's substantive statutory Appeals of right, his substantive fundamental constitutional right to jury trial as demanded and entitled to, and so relief petitioner of the state's invidious intentional, arbitrary discrimination, abuse, and oppression of inequality, protecting and restoring petitioner's substantive fundamental constitutional right to the equal protection of the laws that has been violated by the state. Also, this case presents questions of fundamental state and national importance of protecting individual rights, rich or poor, especially the poor, and the non-politically connected, from the oppressive and destructive effect of the heavy weight and encompassing damaging impact of all forms of state powers, intentionally negatively applied to individuals like in this case, to arbitrarily deny individuals substantive and fundamental legal rights, and ruin lives.

ARGUMENT.

The State Court's discriminatory action against petitioner in denying him his statutory right to appeals of right and his constitutional right to jury trial was not and is not an error. Its action had no and has no justification, legitimate purpose, or rational basis, nor had any reasonable relationship to any compelling or valid state objective. It was/is, an INTENTIONAL, ARBITRARY, and invidious discrimination on account of political reasons, by a state agency, the state court, protecting respondent, another state agency, from legal claims. The discrimination against petitioner

was/is done deliberately for the purpose of treating petitioner differently from other similar litigants within the state. Petitioner having had and has a state agency as an adversary, while the other litigants referenced below among many, *[i.e. Waattii & Sons Elec. Co., v Dehko, 230 Mich. App. 582 N.W. 2d 372, 1998, and People v Kincaid 1994, 206 Mich. App. 477, 522 N.W. 2d 880*; MCR 7.215 (I)(1)], did not have a state agency or agencies for an adversary. The purpose of the State (Respondent and the Courts) regarding this case, is to use all its political powers, reach, and influence whenever necessary, at whatever cost, covertly or overtly, to impede, delay, deny, and deprive petitioner his legal rights inherent in the case before the Honorable Court. All in violation of petitioner's Fourteenth Amendment rights to the equal protection of the laws. Again, the courts sole purpose was/is to intentionally arbitrarily deny and deprive petitioner, **with finality,** and without resolution, the statutory and constitutional rights inherent in his legal claims against the respondent by denying him his statutory appeals of right.

U.S.C.A. Const. Amend. 14. Lindsey v Normet, 92 S. Ct. 862,(at 27), 405, U.S. 56, 31 L. Ed. 36."

> **"Where a state provides appellate review, it cannot be granted to some litigants and capriciously or arbitrarily denied to others without violating the Equal Protection clause".**

Also see: Glicker v Michigan Liquor Control Commission, 160 F. 2d 96. (At 5, 6,7, & 8).

"Intentional discrimination by a state against a person within its jurisdiction violates equal protection of laws clause of Fourteenth Amendment, ..."

Contrary to the Court of Appeals claim as presented on its order of July 29, 2002 that it did not have jurisdiction over petitioner's appeals of right, the law of the state, both statutory, established case laws, and court rules, clearly says that it does. See page 4-6 above and the rest of this brief. **And so, the Orders** of the State Courts regarding this case, are nothing more than the Courts intentionally false judicial discriminatory devices, to cover up and perpetuate the intentional discriminatory conducts of the respondent, and the circuit court below. Intentional Judicial invidious discrimination being perpetrated under the guise of procedural error, "untimeliness", judicial discretion, or that it considered appeals of right legal issues that were **NOT** before it, many months in advance, before the issues in his appeals of right came before it, **and without any opinion, reference to the record as to what the issues of law, fact, evidence, or otherwise it supposed to have considered were, out of petitioner's several legal issues before the court, or put forth any supporting citations to its claims.** And that is in light of the courts prior decisions, contrary to its orders in this case as cited in this brief. *See: Glicker v Michigan Liquor Control Commission, 160 F. 2d 96 (at 5, 6, 7 & 8).* Again, all in order to arbitrarily deny and deprive petitioner his legal rights inherent in his statutory and constitutional claims against the respondent, and so intentionally arbitrarily,

in an invidious discrimination deny and deprive him the equal protection of the laws.

> **"Prohibitions of Fourteenth Amendment extend to all actions of state denying equal protection of the laws, whatever state agency takes the action or whatever the guise in which it is taken."**

U.S.C.A. art. 6. Amend. 14. Cooper v Aaron, 78 S. Ct. 1401, 358 U.S. 1, 3 L. Ed 2d 19, 79 Ohio law Abs. 452, 79 Ohio law Abs. 462.

The Circuit Court's decision in this case was/is full of errors of facts and laws. Among others, the court skipped half of the pleading before it. It had no evidence of the claim on which its judgment was based. It ignored petitioner's evidence and respondent's admissions before it. The lower Court reached its grossly erroneous decision intentionally by its judicial **abuse of discretion.** P.33-42.

The Court of Appeals knew and knows that were it to have permitted petitioner to appeal as of his statutorily right, and for the court to have reviewed the legal issues in his appeal of right as mandated by statute, court rules, and the established case laws of this case, that it would have had to reverse the lower court's erroneous judgment in favor of petitioner, as the established rule of laws of this case have shown on record, and as put before both the State's Appeals and Supreme Courts by petitioner in his briefs before the courts. (Briefs before the Court of Appeals as submitted on June 14, 2002, August 8 & 16, 2002, November 13, 2000, and May 18, 2001. Briefs before the State Supreme Court as

submitted on September 26, 2002 and March 18, 2003, pages 7-25). **Therefore**, to prevent reversing the lower court and granting petitioner the justice that he deserves according to the law, it intentionally and arbitrarily denied petitioner his statutory appeals of right under false claims as in its order of July 29, 2002, while it granted and grants such right to similar litigants in the state, thereby violating petitioner's constitutional right to the equal protection of the laws. **The state** brought the exertion of its powers in all forms to bear on petitioner, to in effect of its intentional actions, deny petitioner his substantive and fundamental legal rights, in violation of his constitutional equal protection of the laws rights. Therefore, petitioner respectfully calls upon the United States Supreme Court, in its judicial obligation, to enforce the constitutional commands of the Fourteenth Amendment to the U.S. Constitution in this case. See: *Shelley v Kraemer, 68 S. Ct. 836, (at 11), 334 U.S. 1, 92 L. Ed. 1161, A.L.R. 2d 441; Phillip v Naff, 52 N.W. 2d 158, 332 Mich. 389, (at 6).*

> "State Action within the Fourteenth Amendment refers to exertions of state power in all forms and when the effect of that action is to deny rights subject to protection of the fourteenth Amendment, that the state action in violation of the Fourteenth Amendment is equally repugnant to the constitutional commands whether directed by state statute or taken by judicial official in absence of statute, that it is the obligation of the United States Supreme Court to enforce the constitutional commands. U.S.C.A. Const. Amend. 14."

Petitioner prays the Honorable Court to enforce the constitutional command in this case.

1. The Michigan Court of Appeals decision to deny petitioner leave to appeal as of statutory right, while it granted such rights to other litigants cited in this case, bears no reasonable relationship to any valid or legitimate state objective. Its decision conflicts with relevant decisions of its own courts, and now importantly, with The United States Supreme Court as shown above and below. It was an intentional and arbitrary invidious discrimination against petitioner appealing from adverse decisions of a state court. Note that the difference in petitioner's case and the other state cases cited in this presentation is, petitioner's adversary is a state agency, just like the state courts, while the cited cases were not against a state agency or agencies. Therefore the partiality seen in judicial conducts in treating petitioner differently by denying him his statutory appeals of right, while it granted and granting such rights to litigants whose cases are similar to petitioner's case, but not against state agencies as shown in this case, is the court's bias to protect another state agency from legal claims, and in that process, violated and violates petitioner's constitutional equal protection of the laws rights.

The State Court of Appeals contends that petitioner's appeal of the October 25, 2000 interlocutory order of the circuit court denying reconsideration of its judgment of October 11, 2000 was denied by the court on May 3, 2001, because the court concludes in that order, that the basis on which the appeal was taken was of no merit. The court did not specify any of the many claims made in that appeal that it considered to have no merit. It

made a conclusory decision without an opinion, reference to the record as to what issues of law, facts, evidence, or otherwise, that it supposed to have considered were, out of petitioner's several legal claims before the court, nor cited any legal authority to support its claim. The Court intentionally arbitrarily failed to review the legitimate legal issues of merit laid out before it by petitioner. See appended order dated May 3, 2001. COA # 230819. Petitioner appealing the court's interlocutory order of October 25, 2000, as filed on November 13, 2000, instead of the October 11, 2000 courts judgment, made a **procedural error** in his filing of appeal like in Waattii & Sons case below. The Court of Appeals on its own initiative, exercised its discretion, and converted petitioner's appeal of interlocutory order to an application for leave to file a delayed appeal, then DENIED leave to appeal. The contention of the court was that petitioner untimely filed appeal of the October 11, 2000 of the circuit court **as filed on November 13, 2000.**

The denial of petitioner leave to appeal by the court was intentionally **in conflict with its own established rule of law** and case precedent as it ruled in *Waattii & Sons Elec. Co., v Dehko, 230 Mich. App. 582 N. W.* 2d 372, **1998;** MCR 7.215 (I)(1).

> "Where the court agreed plaintiff **untimely** filed appeal of right, but both parties had invested a great deal of time, and because trial court incorrectly granted defendant's motion for summary disposition, court granted leave for appeal because it would be unfair to deny plaintiff's recovery **on procedural error."**

Further, the court of Appeals decision to deny petitioner leave to appeal was in conflict with the Michigan Supreme Court's mandate that directs the state court of Appeals as follows:

> "A panel of the court of appeals **MUST** follow the rule of law established by prior published decision of the Court of Appeals issued on or after November 1, 1990 that has not been reversed or modified by the supreme court, or by a special panel of the Court of Appeals as provided for in this rule." MCR 7.215 (I)(1).

Waattii's procedural error decision cited above was issued in **1998.** Petitioner's procedural error was in **2000. Therefore, the court should have granted petitioner leave to appeal as the law of the case dictated and dictates.** The Court's decision to deny petitioner leave to appeal while it granted and grants such right to other litigants in the state, including Waattii above, was not an error, it was an intentional, arbitrary invidious discrimination against petitioner appealing from adverse decision of the state court. It was a purposeful judicial device to intentionally deny and deprive petitioner his legal rights and claims that are apparent in the case at bar. The court's discriminatory conduct against petitioner bears no reasonable relationship to any valid state objective, or serve a legitimate and compelling governmental interest. Its conduct against petitioner was solely to intentionally invidiously discriminate against him, in order to impede, deny, and deprive petitioner his legal rights and claims involved in the case at bar.

Waattii's untimeliness in that case was a procedural error. Petitioner's untimeliness in his case as claimed by the court was a procedural error. **These are issues of law in this case that the court can not impeach or contradict.** The court granted the litigant's involved in Waattii leave to appeal, while it arbitrarily denied leave to petitioner with the exact or same type of error (procedural error). According to the established laws of this case as shown above, and in the rest of this presentation, it was not only unfair to deny petitioner recovery on procedural error, it was/is unlawful, **consequently**, intentionally and knowingly violated petitioner's constitutional rights to the equal protection of the laws. Const. Amend. 14, sec. 1. The decision of the state court is **in conflict with the United States Supreme Court decision** in *Lindsey v. Normet, 92 S. Ct. 862,(at 27), 405 U. S. 56, 31 L. Ed. 36, which states as follows:*

> **"Where a state provides appellate review, it cannot be granted to some litigants and capriciously or arbitrarily denied to others without violating the Equal Protection clause."**

Also the decision of the Michigan court is **in conflict** with the U.S. Appeals Court in *State of Missouri v Lewis, 101, U. S. 22, 11 Otto, 22, 25 L. Ed. 989,* which states as follows:

> **"Equal protection of the laws with constitutional guaranty means that no person or class of persons shall be denied the same protection of the laws which is enjoyed by other persons or other classes in the same**

place and under like circumstances."
U.S.C.A. Const. Amend. 14.

This ruling not only applies to the issues of law in this petition now before the Honorable Court, it also applies to the established rule of laws of this case, not included in this petition, but have been put before the state appellate courts by petitioner in his appeal briefs.

2. The other aspect of the argument in this case, is the court's contention that petitioner's application for leave to appeal as of right was more than 12 months and so untimely, and consequently, summarily dismissed petitioner's appeal for lack of jurisdiction. This assertion is **in conflict** with the established rule of law of the court as shown below. It is true that petitioner application for leave to appeal took place after 12 calendar months after the circuit court's final judgment. **HOWEVER,** this was so because petitioner's appeal of the court's interlocutory order of October 25, 2000 as filed on November 13, 2000, discussed above, was before the Michigan Court of Appeals and Supreme Court from November 13, 2000 to May 30, 2002. Under this circumstance, **the court provides another time beyond the 12 month** stated by the court in its order to file a delayed application for leave to appeal as of right. MCR 7.204 (A)(1)(c). "An appeal of right in a civil action must be taken within another time provided by law." **The another time** provided for by the court is defined by this sample case law among others, as established by the Michigan Court of Appeals in its decision in *People v Kincaid* ***1994,*** *206 Mich. App. 477, 522 N.W. 2d 880, which states as follows:*

> "Time for filing late application for leave to appeal from a denial of motion for relief from judgment was **tolled** during time that appellate proceedings connected with order denying relief from judgment, which established that appeal was discretionary rather than of right were pending in the court of appeals and supreme court."

The Michigan Court of Appeals granted leave to appeal in the People v Kincaid case cited above, **with the same exact circumstance that existed and exists in petitioner's case.** This case was decided in **1994.** Petitioner's timely Application for Leave to appeal as of right was in June **2002.** That application was at the conclusion of the appellate proceedings in petitioner's case connected with the interlocutory order of October 25, 2000, by the circuit court in the same case, which established that appeal was discretionary rather than of right, were pending in the Appeals and Supreme Courts between November 13, 2000, to when it was concluded on May 30, 2002 after the State Supreme Court denied leave without resolving any issue of law in controversy in the case. So according to the law of this case above, the 12 month time for petitioner to appeal as of right was TOLLED by the proceedings in the same case before the courts as stated above. Therefore, the 12 month time to file the application for leave to appeal as of right as done in this case by petitioner only began to run after May 30, 2002 after the conclusion of the proceedings discussed above. Again, the above is another issue of law in this case that the court can not impeach or contradict. Accordingly, by the

established rule of law cited and quoted above, and State's Supreme Court rule (MCR 7.215 (I) (I) quoted above, that mandated and mandates the Court of Appeals to follow the rule of law as quoted above that has been established on or after November 1, 1990, in deciding appellate cases before the court, including deciding petitioner's application for leave to appeal as of right as filed on June 14, 2002. **The Court should have granted petitioner leave to appeal as of right according to the law** as it granted to petitioners in people v Kincaid and others within the state of Michigan. Its failure to grant petitioner his statutory appeals of right is **in conflict with the U. S. Supreme Court** decision in *Lindsey v Normet, 92 S. Ct. 862 (at 27), 405 U.S. 56, 31 L. Ed. 36.* See page 19 above.
The court's failure was an intentional, arbitrary invidious discrimination to deny petitioner his **statutory right** to appeal, the same right that it granted and grants to similar litigants in cases cited above, in the same state, and with similar circumstances were able to enjoy, **consequently violated petitioner's constitutional equal protection of the laws right.**

See other similar established state rule of laws that appealed beyond 12 months after their final judgments, including: *Riza v Niagara Machine & Tool Works, Inc., 411 Mich. 915 (1981); Grievance Administrator v Underwood, 462 Mich. 188* ***(2000)****; People v Tooson, 231 Mich. App. 504, 586 N.W. 2d 764* ***(1998).***

3. Further on the court's order of July 29, 2002, the court contends that petitioner's appeals of right claims were considered in May 2001. In other words,

that it considered petitioner's issues of law that were **NOT** before it, many months in advance, before petitioner presented his appeals of right claims to the court after the conclusion of the interlocutory order proceedings involved in the same case before the court. Again, this time, as it did in 2001, the court **failed to provide any opinion, did not refer to the record of the issues of law, fact, evidence, or otherwise in petitioner's appeal of right claims that it supposed to have considered, nor offer any substantive reasoning as to how it arrived at its conclusion, neither did it provide any citation of authorities to support its claim.** The Court failed to review the legitimate legal issues of merit laid out before it by petitioner. See *Glicker v Michigan Liquor Control Commission, 160 F. 2d 96 (at 5,6,7 & 8).* This was in spite of the Michigan Supreme Court's admonition to the Court of Appeals against issuing conclusory judgments. The court stated as follows: CASE LAW: *Alexander v. City of Detroit, 1974, 392 Mich. 30, 219, N.W. 2d 41, Footnote # 3.*

> "Appellate practice of disseminating written opinion with bare conclusory analysis and a list of abstract principles of law is disapproved of."

The court further explains that:

> "the appellate process of disseminating written opinion is not intended to provide the Bench, the Bar, and the parties with bare conclusory analysis and a list of abstract principles of law. The very point of appellate opinions, rather than summary orders, is the explanatory application of abstract principles to particular

fact situations."

The court further stated:

> "...Nonetheless, we will not lend our imprimatur to the use of appellate opinions which do not hew to the established practice in Michigan of informing the parties, the Bench, and the Bar, the precise grounds for decision of the legal questions in controversy."

The court's conduct going by its claim in its order of July 29, 2002 as to having considered petitioner's appeals of right in its May, 2001 order, was as if judicially lying in wait to harm petitioner. So the content of its order of July 29, 2002 was premeditated to intentionally and arbitrarily discriminate against petitioner by denying him his legal rights while granting the same rights to other litigants within the same state. As shown above, The State Court of Appeals had all the knowledge and elements in this case at its disposal, and also as presented to it by the petitioner, not to intentionally arbitrarily treat petitioner differently from other similar litigants within the state, by not denying him his statutory right to appeals of right, while it granted or grants such right to those similar litigants within the state. With all the knowledge at its disposal, it knowingly ignored and disregarded its knowledge and deliberately chose to intentionally discriminate against petitioner, and thereby **knowingly** violated petitioner's constitutional right to the equal protection of the laws. Const. Amend. 14, sec.1. See *Lindsey v Normet; Shelley v Kraemer; Glicker v Michigan Liquor Control Commission,* as cited above. Also see Yick Wo v Hopkins, 118 U.S. 356 (1886).

JURY TRIAL: (Within the scope of statutory appeals right).

Under The State of Michigan Constitution, Article 1, section 14, petitioner had and has a substantive fundamental constitutional right to jury trial. **"The right to jury trial shall remain when demanded by one of the parties."** That right is also inherent in **The Seventh Amendment to U.S. Constitution,** preserving petitioner's right to trial by impartial jury. Petitioner demanded a jury trial as the record of the court would show. The State's circuit court **intentionally,** with a discriminatory motive, arbitrarily, in bad faith, denied petitioner his constitutional right to jury trial because of his race and national origin, to intentionally and purposely deny him due successful legal judgment and recovery as the case laws of this case have shown. **The State's Court of Appeals** intentionally, arbitrarily, discriminatorily, in bad faith, denied petitioner his statutory appeals of right and consequently denied and deprived petitioner his constitutional right to jury trial that is within the scope of the appeals of right, and **so infringed upon and violated petitioner's constitutional right to the equal protection of the laws.**

U.S.C.A. Const. Amend. 7.; McCoy v Goldston, 652 F. 2d 654.

> **"Right to impartial jury in civil cases is inherent in Seventh Amendment's preservation of right to trial by jury ..."**

Petitioner is entitled to his constitutional right to jury trial as demanded.

Respondent is a state's agency, the court(s) is a state agency. The court intentionally, in bad faith, violated petitioner's constitutional rights in order to protect the state against legal claims, by invidiously discriminating against petitioner, and consequently violating petitioner's constitutional right to the equal protection of the laws, in order to intentionally deny petitioner due successful legal judgment and recovery **as the established rule of laws of this case have shown or indicated in the court's record,** just by denying petitioner his statutory right to appeals of right, while it granted and grants such rights to similar litigants who did not and does not have the state or any of its agencies as an adversary as petitioner has shown in this case.
See: *Shelley v Kraemer, 68 S. Ct. 836 (at 11), 334 U.S. 1, 92 L.Ed. 1161, 3 A.L.R. 2d 441; Phillip v Naff. 52 N.W. 2d 158, 332 Mich. 389* (at 6), quoted on page 15 above.

The state's intentional arbitrary denial of petitioner's substantive statutory right to his appeals of right, (MCR 7.204, MCR 7.203 (A)(1): MCLA 600.308), his constitutional right to jury trial, (The Seventh amendment to the U.S. Constitution; The State of Michigan Constitution, Article 1, section 14), was the state's judicial discriminatory device or ploy to deny petitioner his **substantive and fundamental legal rights** inherent in the statutory and constitutional provisions listed above **using its judicial, political, and other forms of its powers to nullify the laws, including petitioner's statutory and constitutional rights, and deny him his due justice.** Preferring

instead to preserve the **status quo** at the expense of justice and fairness, or upholding the constitution, by invidiously discriminating against petitioner. Hence, **The State intentionally violated petitioner's constitutional equal protection of the laws rights.** The Honorable court ruled in *William v Illinois, 90 S. Ct. 2018,(at 12), 399, U.S. 235, 26 L.Ed. 2d 5866, 52 O. O. 2d 281* as follows:

> **"Constitutional imperatives of the Equal Protection clause must have priority over the comfortable convenience of the status quo."**

Petitioner prays the Honorable Court would apply the same standard as above in this case.

CONCLUSION

As shown in the presentation above, Petitioner concludes as follows:

1. The Court of Appeals had and has jurisdiction over petitioner's appeal of right. Petitioner was/is timely with his appeal. The legal issues in his appeals are of merit. The State wilfully, arbitrarily, in an intentionally invidious discrimination against petitioner, denied petitioner his substantive statutory appeals of right, while it granted such right to other similar litigants within the state. It consequently arbitrarily denied petitioner his substantive fundamental constitutional right to jury trial that is within the scope of his statutory appeals of right. As a result of the above, the court intentionally, arbitrarily, in bad faith, and in an invidious discrimination, violated petitioner's substantive fundamental constitutional right to the equal protection of the laws. Const. Amend. 14.

2. The State Courts decision conflicts with relevant decisions of the United States Supreme Court as cited above in this presentation.

3. Petitioner is constitutionally entitled to the right to present his case to an impartial jury as demanded and has a fundamental right and entitled to the constitutional equal protection of the laws. Const. Amend. 7 & 14.

4. The State of Michigan Courts, with discriminatory motive, intentionally failed to provide equal justice under the laws to petitioner, or failed to treat petitioner equally under the laws, by violating petitioner's statutory and constitutional rights, in a wilful, intentional, and arbitrary violation of his constitutional rights to the equal protection of the laws, in order to unjustifiably deny him his due successful legal judgement in this case, and so unjustifiably, wrongly, and discriminatorily deny him recovery regardless of how such discriminatory decisions negatively impacts him. Const. Amend. 14.

5. The state's discriminatory actions against petitioner had no and has no justification, legitimate purpose, or rational basis for such discriminatory conducts against petitioner, nor had any reasonable relationship to any compelling or valid state objective. It was an intentional, arbitrary invidious discrimination, a purposeful judicial device, to discriminate against petitioner on account of political reasons, by a state agency, the state court, protecting respondent, another state agency, from legal claims, while it did not treat similar litigants, in the same state, and under like circumstances as mentioned in this case, who did not have a state agency or agencies as adversary discriminatorily. Hence, the state infringed upon and

violated petitioner's constitutional equal protection of the laws right. Const. Amend. 14.

6. The above conclusions points to only one overriding conclusion, and that is, that the state court's decision in this case to intentionally and arbitrarily deny petitioner his constitutional and statutory rights should be vacated, and case remanded to the State Court of Appeals, to reinstate petitioner's constitutional right to jury trial, and his statutory appeals of right, followed by the order of the Honorable Court to the state Court of Appeals to do a complete and thorough review of each and every one of petitioner's legal issues in his appeals of right, according to the mandates of statute and all relevant court rules, and the established laws of this case.

Again, as presented above in this brief, the State intentionally, in an invidious discrimination, brought the exertion of its power in all its forms to bear on petitioner, to in effect of their actions, deny petitioner's, substantive, and fundamental legal rights, in violation of his constitutional equal protection of the laws rights. Therefore, petitioner respectfully calls on the United State's Supreme Court, **in its legal obligation,** to enforce the constitutional commands of the Fourteenth Amendment to the U.S. Constitution in this case by vacating the decision of the state Court of Appeals, reinstate petitioner's appeals of right, and remand to that court for further proceedings. See: *Shelley v Kraemer, 68 S. Ct. 836,(at 11), 334 U.S. 1, 92 L. Ed, 1161, 3 A.L.R. 2d 441; Phillip v Naff, 52 N.W. 2d 158, (at 6), 332 Mich. 389.*

Petitioner prays The Honorable Court to uphold the constitution in this case and do as above.

RELIEF REQUESTED.

Petitioner respectfully prays the Honorable Court to grant him a writ, or hold such in abeyance, and in lieu of granting a writ, to **vacate** The state Court's order of July 29, 2002, maintain jurisdiction, and remand this case back to that Court, direct and/or order the Court of Appeals to reinstate petitioner's statutory appeals of right as he is statutorily entitled to, to provide petitioner with jury trial and equal justice under the laws as mandated by the constitution, and to do a complete review of each and every one of the legal issues in controversy in petitioner's statutory appeals of right before it, according to the established rule of laws of this case, and as provided for by statute and court rules, and as it has done for other litigants in the state. And to provide its findings, and reasons behind those findings in its written opinion, according to the mandates of statute, MCR 7.215 (I)(1), P.19 A and other relevant court rules, Alexander v City of Detroit, 1974, 392 Mich. 30, 219 NW 2d 41, Footnote # 3; as cited and quoted above, P.24 A and the constitutional provisions of the equal protection of the laws. Respectfully, Petitioner prays the Honorable Court to relief him of the state's invidious, intentional, arbitrary discrimination, abuse, and oppression of inequality. Also direct the state, any of its agencies or agents, to stop discriminating against petitioner, or violating his constitutional right to the equal protection of the laws.

Respectfully Submitted:

Shola Abe

Babashola (Shola) Abe, Petitioner.

Dated: ~~September~~ October 12, 2003.

APPENDIX (I)

1. Opinion and Order of the Circuit Court.

2. Opinion and Order of the Circuit Court.

NOTE:

This petition concerns the July 29, 2002 Order of the Michigan Court of Appeals, in which the court intentionally and arbitrarilly denied Petitioner his STATUTORY APPEALS OF RIGHT of the final judgment and order of the circuit court.

The proceedings leading to the order of this date, (July 29, 2002), commenced at the circuit court on May 16, 2000, following the court of Appeals remand order of July 7, 1998, and concluded with its Final Judgment and Order of October 11, 2000, **which is appeallable as a matter of statutory right.**

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF INGHAM

BABASHOLA ABE, Plaintiff, -vs- MICHIGAN STATE UNIVERSITY, Defendant.	))))))	File No. 96-82140-NZ Plaintiff's Motion to Dismiss

Opinion of the Court from the proceedings had in the above-entitled cause before the Hon. Peter D. Houk, Circuit Judge, at Mason, Michigan, on May 10, 2000.

APPEARANCES:

BABASHOLA ABE
144 Highland Avenue, #311
East Lansing, Michigan 48823
Appearing In Pro Per

MICHAEL J. KILEY, Esq.
Office of the General counsel, MSU
494 Administration Building
East Lansing, Michigan 48824-1046
Appearing in behalf of Defendant

THE COURT: This is a (C) (10) motion brought by the Plaintiff in this matter. The majority of the evidence presented by the Defendant -- excuse me, by the Plaintiff -- in this matter pertains to claims that were dismissed by the court of Appeals and barred by the statute of limitations.

The only allegation not barred, that Michigan State University relied on an inaccurate failure rate, does not show that the university had an intent to discriminate based on national origin.

The same is true for any allegation that Plaintiff was denied equal protection under the law. All similarly-situated students that were recycled five times were also denied admission.

This Motion is denied.

Mr. Kiley and Mr. Abe -- Miss Lake, take the two of them to Mrs. -- Mrs. Baird isn't here. Give them a Scheduling order and put them on the six-month track.

That's all.

MR. KILEY: Thank you, Your Honor.

MR. ABE: Thank you, Your Honor.

(End of Opinion)

- - -

CERTIFICATE OF REPORTER

STATE OF MICHIGAN)
) ss
COUNTY OF INGHAM)

I, Phillip S. Tietsort, Official Court Reporter, within and for the County of Ingham, State of Michigan, do hereby certify that I reported the proceedings had in the case of Babashola Abe versus Michigan State University before the Honorable Peter D. Houk, Circuit Judge in and for the 30th Judicial Circuit of Michigan, at Mason, Michigan, on May 10, 2000, and that the annexed and foregoing typewritten record constitutes a true and correct record of the proceedings had.

Dated: May 16, 2000.

Sig/ Philip S Tietsort
Philip S. Tietsort, R0263,
Official Court Reporter.

STATE OF MICHIGAN
IN THE INGHAM COUNTY CIRCUIT COURT
GENERAL TRIAL DIVISION

BABASHOLA ABE Plaintiff,	OPINION AND ORDER
v MICHIGAN STATE UNIVERSITY, Defendant.	Hon. Peter D. Houk Docket No.: 96-82140-NZ

The Court having considered plaintiff's Motion for Summary Disposition and Defendant's response thereto, and having heard oral argument on September 6, 2000, issues the following Opinion and Order.

OPINION

FACTS

The Elliott-Larsen Civil Rights case is on remand from the Court of Appeals. Plaintiff was a student at Michigan State University ("MSU"), College of Osteopathic Medicine, from 1987 until 1991. During that time, Plaintiff was dismissed four times for poor academic performance and was readmitted after each dismissal. He voluntarily withdrew from school in 1991. Plaintiff re-applied to the College of Osteopathic Medicine on January 15, 1993, and was denied re-admission.

On January 11, 1996, Plaintiff, who is originally from Nigeria, filed this complaint alleging national

origin discrimination. Specifically, Plaintiff alleges that between 1988 and 1992, MSU employees tampered with his grades and denied him credits he had properly earned. Plaintiff further alleges that the 1993 denial of his application was based on an intent to discriminate against him because of his national origin.

In July, 1996, the Hon. Thomas L. Brown dismissed Plaintiff's Complaint in entirety as barred by the applicable three year statute of limitations. Plaintiff argued to the trial court that his claim regarding the 1993 re-application was timely and the previous claims were also timely under the continuous violation doctrine, which states that stale claims of discrimination may latch onto the coattails of timely claims if there is continuous pattern of discrimination. Sumner *v Goodyear Tire & Rubber Co,* 427 Mich 505, 553; 398 NW2d 368 (1986). The trial court rejected this argument and issued summary disposition as to all of the claims, including the 1993 re-application claim.

Plaintiff appealed this decision and in 1998, the Court of Appeals affirmed Judge Brown in part, reversed in part, and remanded this case back to the trial court for further proceedings.1 The Court of Appeals held that the 1993 claim was timely. The Court of Appeals affirmed Judge Brown on the issue of continuous violation doctrine and held that all allegations prior to 1993 claim are barred.

1This case was then reassigned to this Court, as Judge Brown currently serves in the Family Division of the Ingham County Circuit Court.

Plaintiff sought application for leave to appeal to

Michigan supreme Court, which was denied in 1999. Plaintiff also requested a writ of certiorari in the United States Supreme Court, which was denied in March of this year.

Plaintiff now brings this Motion for Summary Disposition pursuant to MCR 2.116 (C) (9) and (10). Defendant responds by requesting Summary Disposition pursuant to MCR 2.116(I)(2).

ANALYSIS

A summary disposition motion for failure to state a valid defense, MCR 2.116 (C) (9), tests the legal sufficiency of the defense pled. This motion is tested by reference to the pleadings alone, with all pled allegations accepted as true. The proper test is whether defendant's defenses are so clearly untenable as a matter of law that no factual development could possibly deny plaintiff's right to recovery. Further, summary disposition is improper under this rule where a material allegation of plaintiff's complaint is categorically denied. *Domako v Rowe,* 184 Mich App 137, 142; 457 NW2d 107 (1990).

In reviewing a motion for summary disposition brought under (C) (10), the court considers affidavits, pleadings, depositions, admissions, and documentary evidence filed in the action or submitted by the parties in the light most favorable to the party opposing the motion. A trial court may grant a motion if the affidavits or other documentary evidence show that there is no genuine issue on

respect to any material fact, and the moving party is entitled to judgment as a matter of law. Smith v Globe Life Ins. Co, 460 Mich 446, 454-455; 597

NW 2d 28 (1999).

Regarding Plaintiff's (C)(9) motion, Plaintiff fails to discuss how Defendant has failed to deny his allegations or raise a valid defense. Moreover, Defendant denies that plaintiff was discriminated against and contends that plaintiff was not readmitted because of poor academic performance. Therefore, this motion is denied.

Moving to Plaintiff's (C)(10) motion, Plaintiff contends that he was denied re-admission for the fifth time because of his national origin. In support of this claim, Plaintiff alleges that in 1988 he was denied credits for classes he had successfully completed, in 1990 he was denied the opportunity to remediate some courses, in 1991 he was denied an opportunity to attend another school, in 1992 Defendant failed to change his grades after he had informed MSU that he thought that they were incorrect, and lastly, in 1993, Plaintiff was denied his request for re-admission. Plaintiff contends that all of these allegations demonstrate how Defendant discriminated against him.

Defendant responds that the reason Plaintiff was denied readmission was because he had a 42.25% failure rate, not because of Plaintiff's national origin. Furthermore, since Plaintiff is unable to show that this nondiscriminatory reason is mere pretext, this complaint should be dismissed in favor of Defendant. *Wilcoxon v Minnesota Mining & Manufacturing Co,* 235 Mich App 347; 597 NW2d 250 (1999). Defendant requests summary disposition pursuant to MCR 2.116(I)(2).

Under sec 40291) of the Civil Rights Act,

MCL 37.2402(1); MSA 3.548(402)(1) provides:

An educational institution shall not:

(a)Discriminate against an individual in the full utilization

BEST AVAILABLE COPY

of or benefit from the institution, or the services, activities, or programs provided by the institution because of religion, race, color, national origin, or sex.

(b)Exclude, expel, limit, or otherwise discriminate against an individual seeking admission as a student or an individual enrolled as a student in the terms, conditions, or privileges of the institution, because of religion, race, color, national origin, or sex.

MSU must refrain from considering an applicant's national origin in deciding whether to admit a student. *Fonseca v Michigan State University,* 214 Mich App 28; 254 NW2d 273 (1995). In order for a plaintiff to prevail, he must produce some facts from which a fact finder could reasonably infer unlawful motivation. Fonseca, supra (Citing Featherly v Teledyne Industries, Inc, 194 Mich App 352, 357-358; 486 NW2d 361 (1992).

In this case, Plaintiff has presented no evidence that MSU had any discriminatory intent when he was denied re-admission. In fact, Plaintiff filed a claim with the Department of Civil Rights contending that MSU had discriminated against him. In its decision, the Department stated that there was no evidence of discrimination and that MSU has never allowed a student to be re-admitted for a fifth time and that over the past ten years, only four students have been allowed to recycle four times. Plaintiff was one of those four students. (Defendant's Exhibit 11).

Plaintiff's only other argument is that when he was denied readmission in 1993, MSU relied on inaccurate information. Plaintiff contends that in his denial letter, MSU states that he was not readmitted

because he had a 42.25% failure rate. Plaintiff

asserts that this figure is wrong and that it shows that MSU acted with an intent to discriminate against him. Defendant responds that it investigated Plaintiff's claim that this figure was inaccurate and in fact, Plaintiff's failure rate was computed consistent with MSU procedures. (See Defendant's Exhibits 7 and 8.) Therefore, the only evidence pertaining to this claim is that the figure is accurate and consistent with MSU policy. Moreover, the unrebutted evidence shows that Plaintiff was dismissed because of poor academic performance, not for the purpose of discrimination. Therefore, the Court finds that Defendant is entitled to judgment as a matter of law.

The last issue raised by Plaintiff is that he has been treated differently than other students similarly situated in violation of his right to Equal Protection. Plaintiff pleads no facts and presents no evidence, however, pertaining to the 1993 re-application process to show that other similarly situated students were treated differently, Plaintiff only discusses pre-1993 allegations of violation of equal protection which have been dismissed. Additionally, as noted above, no student has been allowed to recycle five times. Thus, Plaintiff has provided no evidence that he was treated differently than those similarly situated and Defendant is entitled to judgment as a matter of law.

ORDER

IT IS ORDERED that Plaintiff's Motion for Summary Disposition is hereby **DENIED** and Defendant's Motion for Summary Disposition pursuant to MCR 2.116(I)(2) in hereby GRANTED, as there are no genuine issue of material fact and Defendant is entitled to judgment as a matter of law.

Dated: October 11, 2000

Sig/ Peter D. Houk
Hon. Peter D. Houk
Circuit Court Judge

PROOF OF SERVICE

I certify that I mailed a true copy of the above OPINION AND ORDER upon all attorneys of record or parties by placing said copy in the first class mail with postage prepaid from Mason, Michigan, on **October 11, 2000.**

Sig/ Ann M. Baird
Ann M. Baird
Judicial Assistant

cc: Babashola Abe
Michael Kiley

APPENDIX (ii)

1. May 3, 2001, Order of The Michigan Court of Appeals.
COA # 230819 - Referenced by the court in its July 29, 2002 Order above. See above, page 4, second paragraph; page 12, second paragraph; page 22, item # 3. Note petitioner's arguments to the court's violation of his constitutional rights.

2. July 29, 2002 Order of the Michigan Court of Appeals. See Appendix iv below.

3. Michigan Supreme Court Order of November 30, 2001.

4. Michigan Supreme Court Order of February 28, 2002.

Court of Appeals, State of Michigan
ORDER

Gary R. McDonald
Presiding Judge

Babashola Abe v Michigan state University

Docket No. 230819 Peter D. O'Connell

L.C. No. 96-082140-NZ Donald S. Owens
Judges

The Court orders that the motion to file a reply brief is GRANTED.
The application for delayed appeal is **DENIED** for lack of merit in the ground presented.

STATE OF MICHIGAN A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

TUBOR

COURT OF APPEALS May 3 2001
Date
"s/ Sandra Schultz Mengel
Chief Clerk

Michigan Supreme Court

Order

Lansing Michigan

Entered: November 30, 2001

Maura D. Corrigan
Chief Justice

119609

Michael F. Cavanagh
Elizabeth A. Weaver
Marilyn Kelly
Clifford W. Taylor
Robert P. Young, Jr.
Stephen J. Markman
Justices

BABASHOLA ABE,
Plaintiff-Appellant,

v

SC: 119609
COA: 230819
Ingham CC: 96-082140-NZ

MICHIGAN STATE UNIVERSITY,
Defendant-Appellee.

On order of the Court, the application for leave to appeal from the May 3, 2001 decision of the Court of Appeals is considered, and it is **DENIED** because we are not persuaded that the question presented should be reviewed by this court.

Kmt:1127

SEAL OF THE MICHIGAN SUPREME COURT LANSING

I, CORBIN R. DAVIS, Clerk of the Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

November 30, 2001. Sig/ Corbin R. Davis
Clerk

Michigan Supreme Court

Order

Lansing, Michigan

Entered: **February 28, 2003**

Maura D. Corrigan
Chief Justice

122406

Michael F. Cavanagh
Elizabeth A. Weaver
Marilyn Kelly
Clifford W. Taylor
Robert P Young, Jr.
Stephen J. Markman,
Justices

BABASHOLA ABE
Plaintiff-Appellant,

v

MICHIGAN STATE UNIVERSITY,
Defendant-appellee

SC:122406
COA: 241968

Ingham CC: 96-082140-NZ

/

On order of the court, the application for leave to appeal from the July 29, 2002 decision of the Court of Appeals is considered, and it is **DENIED,** because we are not persuaded that the questions presented should be reviewed by this court.

B0225
SEAL OF THE MICHIGAN SUPREME COURT, LANSING.

I, CORBIN R. DAVIS, Clerk of the Michigan Supreme Court, certify that the Foregoing is a true and complete copy of the order entered at the direction of the Court.

February 28, 2003

"S/ Corbin R. Davis, Clerk

APPENDIX (iii)

Michigan Court Orders denying rehearing and reconsideration.

STATE OF MICHIGAN
IN THE INGHAM COUNTY CIRCUIT COURT
GENERAL TRIAL DIVISION

BABASHOLA ABE, Plaintiff	ORDER Hon. Peter D. Houk
v	
MICHIGAN STATE UNIVERSITY, Defendant	Docket No.: 96-82140-NZ

ORDER

This Court, having considered Plaintiff's Motion for Reconsideration of this Court's Order of October 11, 2000, issues the following Order:

IT IS ORDERED that Plaintiff's Motion for Reconsideration is **DENIED** as Plaintiff has not demonstrated a palpable error by which this Court and the parties to this action have been misled and that a different disposition of the motion must result from correction of the matter.

Dated: October 25, 2000

sig/ Peter D. Houk
Hon Peter D. Houk
Circuit Court Judge

PROOF OF SERVICE

I certify that I mailed a true copy of the above ORDER upon all attorneys of record or parties by placing said copy in the first class mail with postage prepaid from Mason, Michigan, on October 25, 2000.

Sig/ Ann M. Baird
Ann M. Baird
Judicial Assistant

cc: Babashola Abe
Michael Kiley

A TRUE COPY
CLERK OF THE COURT
30th JUDICIAL CIRCUIT
COURT

STATE OF MICHIGAN
IN THE INGHAM COUNTY CIRCUIT COURT
GENERAL TRIAL DIVISION

BABASHOLA ABE Plaintiff, v MICHIGAN STATE UNIVERSITY, Defendant.	ORDER Hon. Peter D. Houk Docket No.: 96-82140-NZ

This Court, having considered Plaintiff's Motion to Amend the Complaint, issues the following Order.

ORDER

IT IS ORDERED that Plaintiff's Motion to Amend the Complaint is hereby **DENIED** as Plaintiff has failed to accompany with his motion a proposed Amendment Complaint and Plaintiff has failed to identify the specific causes of actions he wishes to add to the Complaint.

Dated: **July 25, 2000**

sig/ Peter D Houk
Hon. Peter D. Houk
Circuit Court Judge

PROOF OF SERVICE

I certify that I mailed a true copy of the above ORDER upon all attorneys of record or parties by placing said copy in the first class mail with postage prepaid from Mason, Michigan, on July 25, 2000.

Sig/Virginia Hulbert
For Ann M Baird
Judicial Assistant

cc: Babashola Abe
Michael J. Kiley

A TRUE COPY
CLERK OF THE COURT
30th JUDICIAL CIRCUIT COURT

STATE OF MICHIGAN
IN THE INGHAM COUNTY CIRCUIT COURT
GENERAL TRIAL DIVISION

BABASHOLA ABE
Plaintiff,

v

MICHIGAN STATE UNIVERSITY,
Defendant

ORDER
Hon. Peter D. Houk.
Docket No.: 96-82140-NZ

This Court, having considered Plaintiff's Motion for Reconsideration of this Court's Order dated July 25, 2000, issues the following Order.

ORDER

IT IS ORDERED that Plaintiff's Motion for Reconsideration is hereby **DENIED** as Plaintiff has failed to demonstrate a palpable error by which this court was misled in making its decision and that a different disposition must result.

Dated: **August 3, 2000**

sig/ Peter D Houk
Hon. Peter D. Houk
Circuit Court Judge

PROOF OF SERVICE

I certify that I mailed a true copy of the above ORDER upon all attorneys of record or parties by placing said copy in the first class mail with postage prepaid from Mason, Michigan, on August 3, 2000.

Sig/ Virginia Hulbert
For Ann M. Baird
Judicial Assistant

cc: Babashola Abe
Michael J. Kiley

A TRUE COPY
CLERK OF THE COURT
30th JUDICIAL CIRCUIT COURT

Court of Appeals, State of Michigan

ORDER

Jessica R. Cooper
Presiding Judge

Babashola Abe v Michigan State University

Docket No. 241968

Kutis T. Wilder

L.C. 96-082140-NZ

Patrick M. Meter
Judges

The Court orders that motion for rehearing is **DENIED.**

"S/ Jessica R. Cooper
Presiding Judge

STATE OF MICHIGAN

TUBOR

COURT OF APPEALS

A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

SEP 9 2002
Date

"S/ Sandra Schultz Mengel
Chief Clerk

Court of Appeals, State of Michigan

ORDER

Gary R. McDonald
Presiding Judge

Babashola Abe v Michigan State University

Docket No. 230819
LC NO. 96-082140-NZ

Peter D. O'Connell
Donald S. Owen
Judges

The Court orders that plaintiff's motion for **rehearing is DENIED.**

A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

STATE OF MICHIGAN
TUBOR
COURT OF APPEALS

JUN 18 2001 sig/ Sandra
Date Shultz Mengel
Chief Clerk
Sig/ ARM

Michigan Supreme Court

Order

Lansing, Michigan

Entered **May 30, 2002**

Maura D. Corrigan
Chief Justice
Michael F. Cavahagh
Elizabeth A. Weaver
Marilyn Kelly
Clifford W. Taylor
Robert P. Young, Jr.
Stephen J. Markman,
Justices

119609
(29)

BABASHOLA ABE
Plaintiff-Appellant,
v.
MICHIGAN STATE UNIVERSITY,
Defendant-Appellee.

SC: 119609
COA: 230819
Ingham CC: 96-082140-NZ

On order of the Court, the motion for reconsideration of this court's order of November 30, 2001, is considered, and it is **DENIED**, because it does not appear that the order was entered erroneously.

Cavanagh, J., would grant reconsideration, and on reconsideration, would reverse the May 3, 2001, order of the Court of Appeals and remand this case to that court for further reconsideration.

lmt:0523

SEAL OF THE MICHIGAN SUPREME COURT LANSING

I, CORBIN R. DAVIS, Clerk of the Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

May 30, 2002 sig/ Corbin R. Davis, Clerk

Michigan Supreme Court

Order

Lansing Michigan

Entered May, 30, 2003

Maura D. Corrigan
Chief Justice

122406(22)

Michael F. Cavanagh
Elizabeth A. Weaver
Marilyn Kelly
Clifford W. Taylor
Robert Young, Jr.
Stephen J. Markman,
Justices

BABASHOLA ABE
Plaintiff-Appellant,

v

SC: 122406
COA: 241968
Ingham CC: 96-082140--NZ

MICHIGAN STATE UNIVERSITY,
Defendant-Appellee.

_____/

On order of the Court, the motion for reconsideration of this Court's order of February 28, 2003 is considered, and it is **DENIED** because it does not appear that the order was entered erroneously.

t0527
SEAL OF THE
MICHIGAN SUPREME
COURT, LANSING

I Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

May 30, 2003

"S/ Corbin R. Davis, Clerk.

BEST AVAILABLE COPY

APPENDIX (iv)
THE JUDGMENT SOUGHT TO BE REVIEWED.

The **July 29, 2002** Order of The Michigan Court of Appeals.

1. Note pg. 4, second paragraph, to page 6 above. Petitioner **as of court record** did argue his appeal **7 months** after the judgment of the lower court, **less than, and within** 12 months from that judgment. Also he argued the court's denial of his constitutional right on page 3-4 of the motion cited on that page. Also see page 21, item # 2 to page 23 above. Both **arguments** in the cited pages above, **in the court's record,** do show that petitioner was **timely** with his appeal, and **timely** within another time allowed by law beyond 12 months, according to the laws of the case, contrary to the court's claim on its order of July 29, 2002. The court can not impeach or contradict these issues of law. **The Court of Appeals had and has jurisdiction over petitioner's appeal.**

2. Also note page 12-21 end of first paragraph; page 23, item 3, to page 25.

3. See **page 15-16 above,** and note argument in terms of the court's other claim in its order. The state knew and knows that it can not legally or legitimately overcome the established rule of laws of this case. So it avoided dealing with the legal issues by intentionally and arbitrarily denying petitioner his statutory appeals of right.

4. Note the rest of petition.

See Order below.

IN THE MICHIGAN COURT OF APPEALS

ORDER

Re: Babashola Abe v Michigan State University
Docket No. 241968
L.C. No. 96-082140-NZ

Harold Hood, Chief Judge Pro Tem, acting under MCR 7.203(F)(1) and 7.216(A)(10), orders:

The delayed application for leave is **DISMISSED** for lack of jurisdiction because appellant failed to file application within 12 months of the date of entry for the October 11, 2002 (rehearing denied October 25, 2000) order as required by MCR 7. 205(F)(3). In addition, the merits of the arguments and issues in plaintiff's prior appeal, No 230819, were considered when that appeal was denied for lack of merit.

"S/ Harold Hood".

STATE OF MICHIGAN

TUBOR

COURT OF APPEALS

A true copy entered and certified by Schultz Mengel,

Chief Clerk, on

JUL 29 2002

Date

"s/ Sandra Schultz Mengel

Chief Clerk

APPENDIX (V).

The Fourteenth to The U.S. Constitution, Article 14, section 1, which states as follows:

"All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the states wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

2. MCR 7.204; MCR 7.203 (A)(1); MCLA 600.308 (1)(a) MSA 27A.308[1][a].

> "THE COURT OF APPEALS HAS JURISDICTION ON APPEALS FROM THE FOLLOWING ORDERS AND JUDGMENTS **WHICH SHALL BE APPEALLABLE AS A MATTER OF RIGHT:** (a) All final judgments from the circuit court..."

STATE OF MICHIGAN
IN THE COURT OF APPEALS

COA # 230819
Case No. 96-82140-NZ
Hon. Peter D. Houk.

BABASHOLA ABE
Plaintiff-appellant- Pro se
v
Michigan State University
Defendant-Appellee.
_____/

Babashola Abe
Plaintiff/Appellant
144 Highland Avenue. # 311
East Lansing, Michigan 48823
(517) 336-5137

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MENGEL
CHIEF CLERK

Michael J. Kiley(26387)
Kirsten K. Quanbeck(PP56493)
Glenn White(P53520)
Office of the Gen. Counsel
Michigan State University
494 Administration Building
East Lansing, MI 48824-1046
_____/

APPELLANT'S MOTION FOR REHEARING HIS APPEAL OF 11/13/2000, PER MCR 7.211.

Appellant hereby respectfully move the Honorable Court to rehear his appeal of Final Judgment / Order entered in this case on October 11, 2000. See 'THE BASIS OF THE JURISDICTION OF THE COURT OF APPEALS" attached.

I.

(2)

Supreme Court U.S.
FILED
DEC 2 9 2003
OFFICE OF THE CLERK

NO. 03-610

IN THE
SUPREME COURT OF THE UNITED STATES.

BABASHOLA (SHOLA) ABE / PETITIONER, PRO SE

v

MICHIGAN STATE UNIVERSITY / RESPONDENT.

Babashola (Shola) Abe -
Petitioner
3111-2C Trappers Cove Trail,
Lansing, Michigan 48910
(517) 394-1605

Michael J. Kiley(P26387) -
Attorney for Respondent
Office of the General Counsel
Michigan State University
494 Administration Building
East Lansing, MI 48824-1046
(517) 353-1798

---/

PETITIONER'S PETITION TO REHEAR.

Babashola (Shola) Abe, PRO SE
3111-2C Trappers Cove
Lansing, MI 48910
(517) 394 - 1605.

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1. **Anzaldua v Band v Michigan State University 578 N.W. 2d 306, (Mich. 1998).** 2, 3, 10.

2. Beasly v Potter, 493 F. Supp. 1059. 4.

3. Glicker v Michigan Liquor control Commission, 160 F. 2d 96. 5.

4. **Lorillard v Pons, 434 US 575, 98 S. Ct. 866, 55 L Ed 2d 40 (1978).** 3.

5. Phillip v Naff, 52 N.W. 2d 158, 332 Mich. 389. 4, 10.

6. Shelley v Kraemer, 68 S. Ct. 836, 334 U. S. 1, 92 L. Ed, 1161, 3 A. L. R. 2d 441. 4,10.

7. **Smith v University of Detroit, 145 Mich. App. 468, 378 NW 2d 511 (1985).** 3.

8. State of Missouri v Lewis, 101 U. S. 22, 11 Otto, 22, 25 L. Ed. 989. 10.

CONSTITUTIONAL PROVISIONS:

9. The Fourteenth Amendment to the U. S. Constitution, Article 14, sec. 1. 1,2,4.

10. The Seventh Amendment to the U.S. Constitution. 1,4

11. The State of Michigan Constitution, Article 1, sec. 14.

12. The State of Michigan Constitution, Article 1, sec. 2.

STATUTES:

13. **The State of Michigan Civil Rights Statute, The Elliott Larsen Civil Rights Act, Public Acts 1976 No. 453, Article 4, Article 8, section 37.2801, 2802, & 2803.** 1, 2, 3, 5, 10.

OTHER CASES: STATE CASES. Page

Anton v Community Emergency Services Inc., 190 Mich. App. 592, 476, NW 2d, 479 (1991). 6.
Burnett v City of Adrian (1982), 326 NW2d 810, 414, Mich. 448. 6
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Cvengros v Farm Bureau Inc., 216 Mich. App. 261, 548 NW2d 698 (1996). 9.
Dafter Sanitary Landfill v Michigan Dept. Of Natural Resources, 1993, 198 Mich. App. 499, NW2d 383. 8.
Hullett v Smiedendort, W.D. Mich. 1999, 52 F. Supp. 2d 817. 5.
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Isagholm v TransAmerica Ins. Corp. 208 Mich. App.9, 527 NW 2d13, (1994). 9.
Jennings v Southwood, 446 Mich. 125; 521 NW2d 230 (1994). 5.
Kennedy v Auto Club, 215 Mich. App. 264, 544 NW 2d 750 (1996). 8.
Lazarus v City of Detroit, 437 Mich. 920, 466 NW 2d (284) (1991). 7.
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McCart v J. Walter Thompson, Inc., 437 Mich. 109, 469 NW 2d 284 (1991). 8.
Medbury v Walsh, 190 App. 554, 556-557, 476 NW2d 477 (1991). 6.
Meyer v City of Centerline, 242 Mich. App. 560, 568, 619 NW2d, 182, (2000). 8.

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Norris v State Farm Fire & Cas. Co. 229 Mich. App. 231, 581 NW2d, 746 (1998). 8.
Quinto v Cross and Peters Co., 451 Mich. 358, 362, 547 NW2d 314 (1996). 8.
Van Keulen V Winchester Lumber Co. Manistee and NER Co., 222 Mich. 682, 687, 193 NW 2d (1923). 6.
Wilcoxon v Minn. Mining & Mfg. Co., 235 Mich. App. 347, NW 2d 520 (1999). 6.

MICHIGAN COURT RULE:

MCR 7.215 (I) (1).

> " A panel of the Court of Appeals MUST follow the rule of law established by prior published desicions of the Court of Appeals issued on or after November 1, 1990 that has not been reversed or modified by the Supreme Court, or by a special panel of the Court of Appeals as provided in this rule."

See all the Michigan cases cited above.

PETITION TO REHEAR.

PETITION TO REHEAR, TO DETERMINE THE **MERIT** OF PETITIONER'S DEMAND AND CLAIM OF RIGHT TO JURY TRIAL, AS INTENDED IN **THE STATE'S ELLIOTT LARSEN CIVIL RIGHTS ACT OF 1976,** IN STATE'S CONSTITUTION, ARTICLE 1, SECTION 14 - PRESERVATION OF LITIGANTS RIGHT TO JURY TRIAL - ON DEMAND, AND THE SEVENTH AMENDMENT TO THE U.S. CONSTITUTION, AND AS DEMANDED BY PLAINTIFF/PETITIONER WITH HIS COMPLAINT & AMENDMENTS ON JANUARY 11, 1996, CASE NO 96-82140-NZ, AS DEMANDED BEFORE THE MICHIGAN COURT OF APPEALS IN BRIEF DATED 11/9 2000, FILED 11/13/2000, COA # 230819, PAGE 45, ITEM # 4, PAGE 46, IN BRIEF BEFORE THE COURT DATED AND FILED JUNE 14, 2002, COA # 241968, PAGE 4 & 5, BRIEF IN SUPPORT, PAGE 50, # 4, PAGE 36 & 51, IN LIGHT OF THE COURT'S INCORRECT STATEMENT OF NO MERIT AND UNTIMELINESS TO SUCH CLAIMS IN ITS ORDER OF JULY 29, 2002, COA# 241968, INCORPORATING ITS ORDER OF MAY 3, 2001 BY REFERENCE. TRIAL COURT ARBITRARILY DENIED JURY TRIAL WITHOUT EXPLANATION. REMAND, TO DETERMINE THE **MERIT** OF ISSUES IN CONTROVERSY IN THIS CASE ARGUED IN PETITION, AS PREVIOUSLY BEFORE THE COURT OF APPEALS. REQUEST FOR A RESPONSE FROM RESPONDENT. DIRECTLY ADDRESS THE APPLICATION OF THE CONSTITUTIONAL EQUAL PROTECTION CLAUSE TO THIS CASE.

INTRODUCTION.

After the review of the argument in support of this petition, it is respectfully, reasonably expected and desirable,

that The Honorable Court would reach the following conclusions. That It would grant rehearing. Request the respondent to respond to petition. If there is no response, then the content of petition should be taken to be completely true and correct. If there is a response, but omit issues in petition unanswered, then such issue(s) should be taken as completely true and correct. This would aid in finding justice in this case. That the July 29, 2002 Order of the Michigan Court of Appeals, which incorporates its May 3, 2001 order by reference, should be vacated, remand to state court, to determine the **MERIT** of whether plaintiff / petitioner had and has right to jury trial as demanded by petitioner, as legislatively intended by The Elliott Larsen Civil Rights Act involved in this case, and as preserved by both Federal and State constitutions, since the trial court intentionally, arbitrarily denied petitioner that right to jury trial without explanation. Also, that The Court would direct the State Court to fully determine the **MERIT** of the issues of law in controversy in the circuit court's judgment, as argued below, and as previously before The Court of Appeals. That The Court would directly address the application of the Equal Protection Clause as concerned in this case.

ARGUMENT

1. In a case very similar to the petitioner's case, involving the same counsel, and the same defendant, as in petitioner's case , *Anzaldua v Band and Michigan State University*, 216 Mich. App.561, 550 N.W. 2d, 544 (1996); MCR 7.2215 (I)(1); ***Anzaldua v Band & Michigan State University*, 578 NW 2d 306,(Mich. 1998);** 457 Mich. 530; 456 Mich. 864, 568 N.W. 2d 683, 684 (1997), The Michigan Supreme Court, Justice Marilyn Kelly, joined by four other justices, upheld the Michigan Court of Appeals decision to reverse a circuit court's judgment that denied plaintiff jury

trial. The Michigan Supreme Court reasoned as follows,

> **"Because the right to jury trial exists as a matter of legislative intent under the Whisleblowers' Protection Act, it is unnecessary for us to reach the question whether such a right is preserved by the Michigan Constitution."**

Plaintiff / Petitioner, brought a discrimination action against defendant / respondent under the Elliott Larsen Civil Rights Act cited in this case, seeking declaratory relief and money damages - a law issue, triable by jury, with a demand for, and entitlement to jury trial like the plaintiff, Anzaldua, in *Anzaldua v Band & Michigan State University* cited above. The State denied plaintiff / petitioner jury trial without explanation. ***The Elliott Larsen Civil Rights Act,*** Public Acts 1976, No 453, Article 8, sections 37.2801, 2802, & 2803, provides for remedies for violation of this Act. Section 37.2801 (MCL 37.2801), provides for injunctive relief; damages; or both, and the right to jury trial as petitioner demanded. " A person alleging a violation of this act may bring a civil action for appropriate injunctive relief or damages, or both." And this right exists as a legislative intent, in suits against the state and its subdivisions. See *Anzaldua v Band* cited above. See, ***Lorillard v Pons,* 434 US 575, 98 S. Ct. 866, 55 L Ed 2d 40 (1978)**. A ruling in which The Court found statutory right to jury trial in the Age Discrimination in Employment Act (ADEA), 29 USC 624 et seq. Also see, *Smith v University of Detroit,* 145 Mich. App. 468, 378 NW 2d 511 (1985). COA # 241968, brief, pg.36. Decision reversed and remanded. <u>The reasoning in these cases, and Anzaldua v Band v Michigan State University cited above, are persuasive, and apply to The Elliott Larsen Civil Rights Act of the State of Michigan, Public Acts of 1976 involved in petitioner's case.</u> These cases, the provisions of The Elliott Larsen Civil Rights Act, plus, petitioner's jury trial rights,

preserved both by State and Federal constitutions, **shows that petitioner's claim of right to jury trial was/is timely and of legal merit,** contrary to the holding of the Michigan Court of Appeals, in its order of July 29, 2002, incorporating its order of May 3, 2001 by reference. The State's Circuit Court arbitrarily denied Petitioner **jury trial as demanded with his complaint** because of petitioner's race and national origin. "Plaintiff demands trial by jury of all jury triable issues."; The State of Michigan Constitution, Article 1, section 14. "The right to jury trial shall remain when demanded by one of the parties". Also see: U. S. Const. Amend. 7." The state's circuit court, and subsequently, the state Court of Appeals, incorrectly arbitrarily denied plaintiff / petitioner jury trial as demanded, and as entitled to, **even though, the right to jury trial exists as a matter of legislative intent under *The Elliott Larsen Civil Rights Act*** cited above, against the State of Michigan and its subdivisions, and equally important, as constitutionally preserved as cited above. State Courts decisions denying petitioner's jury trial rights under the above mentioned legal provisions as in this case, violated and violates the constitutional equal protection of the laws clause. Const. Amend. 14. Such decision should not be allowed to stand. See, *Shelley v Kraemer,* 68 S. Ct. 836, 334 U. S. 1, 92 L Ed, 1161, 3 A.L.R. 2d 441; *Phillip v Naff*, 52 N.W. 2d 158, 332 Mich. 389.

2(a). Petitioner's complaint was based on race and national origin discrimination. By its very nature, a racially discriminatory purpose for challenged act is unlikely to be expressed on the record, discriminatory intent, if it exists, necessarily must be inferred by court from totality of evidence, whether direct, indirect, or circumstantial. U.S.C.A. Constitutional Amendment 14. *Beasly v. Potter,* 493 F. Supp. 1059. In Respondent's discriminations against

petitioner, it violated petitioner's civil rights under The State of Michigan Civil Rights Statute, The *Elliot Larsen Civil Rights Acts of 1976, as amended by Act 11, Public Acts of 1991,* Article 4, section 401; section 402 (1)(a)(b); *The State of Michigan Gross Negligence Statute - Wilful & Intentional conduct,* MCLA 691.1401-1407; *The Federal Civil Rights Statute, Title VI of the Federal Civil Rights Act of 1964, and its implementing regulations,* 45 CFR, part 80, (section 6602 of Title VI, 78 stat. 252; 42 U.S.C. 2000d.1).

Respondent pled no contest to petitioner's allegations of discrimination, nor contest petitioner's demand & entitlement to jury trial, and not immune from jury trial under the Elliott Larsen Civil Rights Act. Respondent later in the proceedings ADMITTED under oath to having intentionally violated the provisions of the above statutes. See Petitioner's Exhibit 38, item # 2, in court's record. Also, # 12,14,18,22,29,38,62,80.

Question: "Do you admit that Michigan State University-College of Osteopathic Medicine hereby to henceforth known as MSU-COM had **a wilful intention** not to retain, educate, and/or graduate Babashola Abe (Shola Abe) as a student as MSU-COM."

Answer: "Defendant **admits the assertion in part.** As of approximately January 1993, **the assertion is admitted.**" See, *Hullett v Smiedendort,* W.D. Mich. 1999, 52 F. Supp. 2d 817. *Glicker v Michigan Liquor Control Commission,* 160 F. 2d 96. Respondent's discriminations against petitioner were wilful, and intentional as admitted to, with the knowledge of its conducts and the adverse effects of those conducts, with the ability to avoid injury to petitioner, but wilfully and intentionally ignored and disregarded its knowledge, with an indifference as to whether harm came to petitioner or not. Respondent's admitted discriminatory conducts was not and is not a high degree of carelessness as ruled by The Michigan Supreme Court in *Jennings v Southwood,* 446 Mich. 125,

NW2d 230, (1994); *Burnett v City of Adrian (1982)*, 326 NW2d 810, 414 Mich. 448; MCR 2.116 (G)(3). *Also see Transcript of Oral Argument, as submitted to the Michigan Court of Appeals*, pg. 3, lines 21-25, pg.4, lines 1-3. Respondent's intentional discriminatory violations against petitioner as admitted to above, had no, and has no justifiable, or legitimate non discriminatory reason. Its discrimination against petitioner was arbitrary. It had no evidence of its claims. It submitted no evidence of its claims on which judgment was based. It did not, and can not produce the evidence to support its claim(s). Respondent's discrimination against petitioner was materially adverse to petitioner. See *Wilcoxon v Minn. Mining & Mfg Co.*, 235 Mich. App. 347; NW 2d 250 1999. Respondent's violation of the above statutes, as admitted to, is a violation of the Equal Protection of the laws. Const. Amend. 14. Respondent is responsible for the consequences of its intentional conducts whether it could or could not have foreseen them. See, *Van keulen v Winchester Lumber Co., Manistee and NER Co.*, 222 Mich. 682, 687, 193 NW 289 (1923); *Anton v Emergency Medical Services Inc.*, 190 Mich. App. 5992, 476 NW 2d 479 (1991).

(b). The Circuit court intentionally arbitrarily failed to dismiss against respondent as moved by petitioner on May 25, 2000, because of respondent's failure to respond to request to admit, produce, answer interrogatories, nor objected to request within the time frame given to do so by court rules. *MCR. 2.312 (B)(1)*. The court's conduct was an abuse of discretion, just to discriminate against petitioner. See *Medbury v Walsh, 190 Mich. App.* 554, 476 NW 2d 470 (1991); MCR 7.215 (I)(1). This case law and court rule, says that the case should have been dismissed against respondent on May 25, 2000, because of the above.

(c). The Circuit Court had no evidence of Respondent's

claim on which judgment was based. There was no and there is no fact or evidence on record to support the circuit court's claim in its opinion regarding respondent's claim(s). That is beside the fact that petitioner denied and denies respondent's claim with relevant documentary evidence. See Michigan COA # 241968, brief, pg. 21-24. The Court asked Respondent's counsel during oral argument,
"THE COURT: Mr. Kiley, how do you get 42 percent? Why are you double counting the classes he's remediated ..."
Counsel had no relevant answer to the court's question, neither did he provide nor submitted any relevant evidence to support its claim as reported in paragraph five of the trial court's opinion, under analysis. That was why it demanded, and in an abuse of discretion, got a discretionary judgment from the court. See section of opinion cited above. See, *Transcript of oral argument in The Michigan Court of Appeals record,* pg. 18, line 25, pg. 19, lines 1-3.
Michigan Supreme Court Case law says that the lower court's judgment should be reversed accordingly. See *Lazarus v City of Detroit,* 437 Mich. 920, 466 NW 2d 284 (1991).
Respondent presentation to the court were only conjectures, in its attempt to defend its indefensible position. The circuit court intentionally, in an abuse of discretion awarded judgment to respondent even though it knew that conjectures can not be used to defeat a motion for summary disposition, as ruled by Michigan Court of Appeals in, *South Macomb Disposal Authority v American Ins. Co.,* 1997, 225 Mich. App. 635, 572 NW 2d 686; MCR 7.215 (I)(1). Again, this case law and court rule mandates judgment in this case to be reversed in favor of petitioner.
(d). Petitioner's pleadings and UNCONTROVERTED admissible documentary evidence before the court, that refuted and nullified respondent's claims, **established** that petitioner was entitled to judgment as a matter of law,

contrary to the trial court's statement in paragraph eight of its opinion, under analysis. See Petitioner's Exhibit 37 and others in the court's record. *Kennedy v Auto Club.* 215 Mich. App. 264, 544 NW2d 750 (1996); MCR 7.215 (I)(1). The state court intentionally, arbitrarily ignored the relevant evidence before it in an abuse of discretion. See *Meyer v City of Centerline,* 242, Mich. App. 560, 568, 619, NW2d (2000); MCR 7.215 (I)(1). These case laws and court rule mandated and mandates a reversal of judgment in favor of petitioner.

(e). Respondent never set forth any genuine issue of material fact regarding its claim as required by MCR 2.116 (G)(4), Rule 56 (C) of the Federal Rule of Civil Procedure, because it had no and has no genuine issue of material fact. The rule of laws mandated and mandates that petitioner is entitled to judgment as a matter of law, and judgment in this case should be reversed in favor of petitioner accordingly. See *McCart v J. Walter Thomson, Inc.,* 437 Mich. 109, 469, NW2d 284, 1991; *Norris v State Farm Fire & Cas. Co.,* 239 Mich. App. 231, 581 NW2d 746 (1998); *Quinto v. Cross & Peters Co.,* 451 Mich. 358, 362; 547 NW2d 314 (1996); *Dafter Sanitary Landfill v Michigan Dept. Of Natural Resources (1993),* 198 Mich. App. 499, NW 2d 383; MCR 7.215 (I)(1).

(f). Respondent did not and can not successfully rebut the legal presumptions above. Its failure to rebut presumptions mandates judgment for petitioner. See *Isabella County Dept. Of Social Services v Thompson,* 1995, 210 Mich. App. 612, 534, NW 2d 132; MCR 7.215 (I)(1).

(g). The Circuit court's final decision is appealable as a matter of statutory right. MCR 7.204; MCR 7.203 (A)(1); MCLA 600.308 (1)(a); MSA 27A.308[1][a].

"The Court of appeals has jurisdiction on appeals from such judgment or order. On may 18, 2001, 7 months, less than 12 months after the circuit court's final judgment, also on June

14, 2002, Petitioner filed the jurisdiction statement of Appeals of Right with The Court of Appeals. Petitioner was timely in claiming and asserting his statutory right above. See, record, Michigan COA #230819, # 241968, page 6, items 1-4.

(h). Respondent has not at any time in the process of this case responded to Petitioner's legal issues before the court in conforming ways to court rules. MCR 7.212 (C(5) & (6). His presentation in response to petitioner is usually, self serving, devoid of relevant citation or reference to the record. This issue was raised before the Michigan Supreme Court by petitioner on March 18, 2003, with a request to strike respondent's brief for such lack of conformity to the rules. File No. 122406, Brief, page 22, item # 5. See *Isagholian v Transamerica , Ins. Corp., 208,* Mich. App.9, 527 NW2d 13, (1994); *Cvengros v Farm Bureau Inc.,* 216 Mich. App. 261, 548 NW 2d 698 (1996); *Continental Paper and Supply Co., v City of Detroit,* 205 Mich. App. 404, 521 NW 2d 844 (1994); *appeal granted,* 448 Mich. 930, 534 NW 2d 519 (1995), *rev'd, remanded on other grounds,* 451 Mich. 162, 542 NW 2d 657 (1996). Petitioner respectfully asks the Honorable Court to request that respondent, respond to this petition for rehearing, addressing each and all the issues raised in this brief. Equality under the law requires that respondent and petitioner be treated equally under the law.

3. The above legal issues in this case are what The Michigan Court of Appeals incorrectly determined to be of no merit. Respondent did not and can not contradict or impeach the merit of the above issues of law and argument. Therefore, the decision of The Appeals Court, and the circuit court decision within its scope, should not be allowed to stand. Because such decisions incorrectly suggests, that petitioner is not entitled to the constitutional rights and the equal protection of the laws like other citizens. Const. Amend. 14.

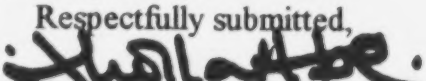
See, *State of Missouri v Lewis,* 101 U.S. 22, 11 Otto, 22, 25 L.Ed. 989. *Anzaldua v Band v Michigan State University* cited above.

Respectfully, it is the obligation of this Honorable Court, as the last supervisory court, to direct and order The State Court to review and fully determine the **merit** of the issues of law in this case. Without such, petitioner's statutory, constitutional, and fundamental rights, with finality, would be irreparably damaged or lost, and justice undone. See, *Shelley v Kraemer,* 68 S. Ct. 836, (at 11), 334 U.S. 1, 92 L. Ed. 1161, A.L.R. 2d 441; *Phillip v Naff.,* 52 NW 2d 158, 332 Mich. 389, (at 6).

CONCLUSION

Respectfully, The Court should grant rehearing, request for a response from respondent, then vacate the State Court's order of July 29, 2002, along with its order of May 3, 2001 incorporated by reference. Remand to state court to determine the MERIT of whether petitioner had and has right to jury trial in this case under The Elliott Larsen Civil Rights Act of 1976, since the trial court arbitrarily denied petitioner his right to jury trial claimed under this act without explanation. Also that The Court would direct The State Court to fully determine the MERIT of issues of law in controversy in the trial court's judgment as argued above, and as previously before The State Court of Appeals. Directly address the application of the Equal Protection Clause to this case, to aid the purpose of justice and fairness.

Respectfully submitted,



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(517) 394-1605.
December 26, 2003.

NO. 03 - 610

IN THE
SUPREME COURT OF THE UNITED STATES

BABASHOLA (SHOLA) ABE - PETITIONER
VS
MICHIGAN STATE UNIVERSITY - RESPONDENT

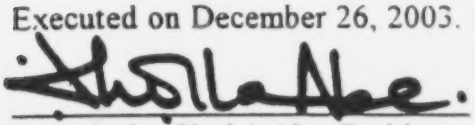
PROOF OF SERVICE.

I Babashola Abe, do swear and declare that on this date, December 26, 2003, as required by the Supreme Court Rule 29.5, 28 U. S. C. Sec. 1746, I have served three copies of the enclosed petition on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing three copies of the above document in the United States mail properly addressed to the counsel of record and with first-class postage prepaid.

The name and address of the person served is as follows: Mr. Michael J. Kiley (26387), Attorney for Respondent, Office of the General Counsel,
Michigan State University, 494 Administration Building, East Lansing, Michigan 48824-1046.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 26, 2003.



Babashola (Shola) Abe, Petitioner.

CERTIFICATE OF PETITIONER.

I Babashola (Shola) Abe, petitioner, do hereby certify that this petition for rehearing is presented in good faith and not for delay. That it is restricted to substantial grounds not previously presented. Also, the contents of this petition are true and correct.

Dated: December 26, 2003.

Babashola (Shola) Abe
Petitioner.